



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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May 29th, 2002

Minutes of the May 29th, 2002, meeting of the Commission on Governmental Ethics and Election Practices conducted telephonically pursuant to the authority of 21-A M.R.S.A. §1002, and coordinated from the Commission's office at 242 State Street, Augusta, Maine.

Participating Telephonically: Chair Alan F. Harding; Members Hon. James O. Donnelly, Hon. Andrew Ketterer, and Hon. David N. Ott; and Counsel Phyllis Gardiner.

Present in Commission Office: Director William C. Hain, III.

Chair Harding called the meeting to order at 10:40 a.m. In addition to the Commission Members and Staff participating telephonically and present in the Commission Offices, Mr. Paul Chizmar participated telephonically in his agenda item.

The Commission considered items on the published agenda as follows:

Agenda Item #2: Maine Clean Election Act Request: Mr. Paul Chizmar

Mr. Chizmar's wife, Representative Nancy Chizmar, a certified Maine Clean Election Act (MCEA) candidate for Senate District 20, passed away on May 14th, 2002. Mr. Chizmar has been asked to consider becoming a replacement candidate for his wife and requested the Commission's opinion whether the qualifying contributions Representative Chizmar had collected and submitted for her MCEA certification could be transferred to Mr. Chizmar should he be nominated to replace Representative Chizmar and apply for MCEA certification. Mr. Chizmar summarized the support Representative Chizmar had received from her constituents and explained that both he and Representative Chizmar had worked together to qualify her for MCEA certification. He explained his reluctance to solicit \$5 qualifying contributions from the same supporters who had already contributed to Representative Chizmar.

Commission Members each expressed their sympathies to Mr. Chizmar for his loss and commented upon Representative Chizmar's outstanding qualities as a Legislator and representative of her constituents. Chair Harding noted, however, that the issue involved a legal interpretation of the Commission's authority and questioned Counsel regarding the Maine Clean Election Act's provisions regarding the issue. Counsel Gardiner noted that the situation presented was not contemplated by the Act or the Commission's Rules. She explained that the Rules establish a qualifying period for a replacement candidate, but they make no provision for one candidate substituting for another, even if the "substitute" candidate is the spouse of the deceased candidate. Members agreed that such a special situation might be appropriate as the

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subject of any amendments to the Clean Election Act that may be proposed to the next Legislature. Members inquired of Counsel regarding the procedures for replacement of vacancies and the eligibility requirements for certification. Counsel also explained the rulemaking process, noting the lengthy time requirements involved except in the case of an "emergency" rule that would require the showing of an immediate threat to public safety, health, or the general welfare.

Mr. Chizmar again noted the unique nature of the present situation. Chair Harding acknowledged Representative Chizmar's accomplishments, but reiterated that the Commission was constrained by the authority to act that is provided to it by the Maine Clean Election Act and the Commission's implementing rules. He explained that before the Commission could act to amend its rules, it would need public input during the rulemaking process in order to consider the various policies that would have to be accommodated. He concluded that the Commission presently lacks the authority to grant the requested relief because the replacement candidate language does not permit the substitution of an uncertified replacement candidate for a certified MCEA. That said, Chair Harding inquired whether Mr. Chizmar desired to pursue or withdraw his request. Mr. Chizmar requested a vote on the request and thanked the Members for their consideration.

Mr. Ott moved, Mr. Ketterer seconded, and by individual voice vote Members voted unanimously to deny Mr. Chizmar's request based upon the lack of legal authority for the Commission to grant the requested relief. Chair Harding expressed his regret to Mr. Chizmar that the Commission could not grant the requested relief and again expressed the Commission Members' condolences for the Chizmar family's loss.

Agenda Item #1: Ratification of Minutes

Mr. Ketterer moved, Mr. Ott seconded, and Members voted unanimously to adopt as printed the minutes of the May 15th, 2002 meeting.

Agenda Item #3: Roger Fleming, Esq., Lobbyist for Conservation Law Foundation, Late Lobbyist Monthly Disclosure Report

By letter dated May 22nd, 2002, Mr. Fleming requested a final penalty determination for the late filing of his April 2002 monthly lobbyist disclosure report. Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously to assess a \$50 penalty for Mr. Fleming's first late reporting violation.

Agenda Item #4A: Late Candidate Registration Form; Eric Perry

Mr. Hain requested that this matter be removed from the agenda because Mr. Perry's payment had been received the morning of the Commission meeting.



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Agenda Item #4B: Late Candidate Registration Form; Michael J. Mosher-Collins

Mr. Mosher-Collins' candidate registration was filed late, notices of a preliminary determination of a \$10 forfeiture were sent on April 29th and May 17th, and the Commission was requested to finally assess a \$10 forfeiture for the late registration. In response to Mr. Ketterer's request for an explanation of the registration and forfeiture procedures, Mr. Hain and Counsel Gardiner explained the staff's processes. Thereafter, Mr. Ott moved, Mr. Donnelly seconded, and Members voted unanimously to assess a forfeiture of \$10 against Mr. Mosher-Collins for the late filing of his candidate registration form.

Agenda Item #5A and #5B: Mark A. Sanborn and Joan A. Stiehler; Failures to File (i.e., Delinquent) Candidate Campaign Finance Reports

Mr. Hain explained the situation of candidates who are "registered" with the Secretary of State's Office, but who fail to register with the Commission as required by Title 21-A, M.R.S.A., and who continually fail to respond to repeated notices informing them of their registration and reporting obligations. Members questioned the procedures for verifying receipt of notifications and expressed their concern that, as citizen legislators, the Commission staff be able to show that candidates actually had received notice of the registration and reporting requirements. Mr. Ott supported Chair Harding's position and suggested that the subjects be given one last chance to comply. Mr. Donnelly suggested that the subject of administrative termination be added to the list of legislative proposals for the next legislative session.

Mr. Donnelly then moved, Mr. Ott seconded, and Members voted 3-1 (Mr. Ketterer opposed) to send one more notice to both Mr. Sanborn and Ms. Stiehler; to make one more telephone call to them informing them of the registration and forfeiture provisions; and, if compliance is not achieved within 15 days after the date of the letter, to refer the matters to the Attorney General.

Agenda Item #6: Delinquent Candidate Registrations

Mr. Hain summarized his effort to notify state parties of primary election candidates (including some incumbent Representatives) of the statutory registration requirements and to solicit their assistance in compliance with those requirements. He recommended that the Commission refer the lists of non-filers to the Attorney General. Failure to file a required report (including candidate registration) within 30 days of the filing deadline is a Class E crime.

Mr. Ketterer noted that the Commission's responsibility is to refer violations to the Attorney General for enforcement and the Commission does not have the discretion to interpret that requirement. Mr. Ketterer then moved and Mr. Donnelly seconded to have the staff prepare a list of all candidates who have not registered within 30 days of the requirement to do so, and to refer that list to the Attorney General for appropriate action. Chair Harding stated that the Commission has the responsibility, before referring a matter to the Attorney General, to have evidence of actual notice of the violation having been given. As a citizen-legislature, more is required than the mere presumption of receipt of notice in each case. Mr. Ketterer responded that the Legislature had spoken on the subject of the administration and enforcement of the



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reporting statutes, and that it is the role of the prosecutor to determine which cases should or should not be prosecuted.

Mr. Hain suggested that the matter might be tabled to afford the staff additional time to establish the fact of notice in each case. Chair Harding moved to table, but lacking a second, the motion did not carry. Thereafter, Members voted 3-1 (Chair Harding opposed) in favor of the original motion to refer filers who were delinquent in excess of 30 days to the Attorney General.

Members discussed the scheduling for the next meeting and agreed that the June meeting should be scheduled for 9:00 a.m. on Thursday, June 13th, 2002, in the Commission's offices.

There being no further business, on motion and unanimous vote, the Commission adjourned at 12:25 p.m.

Respectfully submitted,

William C. Hain, III
Director